

FILED BY CLERK

FEB 19 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0248-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
EDWARD GEORGE BROWNE,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200201019

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Edward G. Browne

Florence
In Propria Persona

ESPINOSA, Presiding Judge.

¶1 Pursuant to a 2003 plea agreement, petitioner Edward Browne was convicted of one count of attempted sexual conduct with a minor and one count of furnishing harmful items to a minor and sentenced to presumptive, concurrent terms of imprisonment, the longer of which is ten years. In 2008, Browne filed a pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in which he argued our

decision in *State v. Gonzalez*, 216 Ariz. 11, 162 P.3d 650 (App. 2007), constituted newly discovered evidence that he was improperly sentenced under former A.R.S. § 13-604.01,¹ and was therefore entitled to be resentenced to a lesser term. *See* Ariz. R. Crim. P. 32.1(e) (“[n]ewly discovered material facts” as ground for Rule 32 relief); 32.2(b) (Rule 32.1(e) claims not subject to preclusion for failure to file timely). In a well-reasoned ruling, the trial court summarily dismissed Browne’s notice and petition for post-conviction relief, finding he “has not presented any applicable exception to the requirement for timely filing.” *See* Ariz. R. Crim. P. 32.6(c) (directing summary dismissal of petition when all claims are procedurally precluded).

¶2 We review a trial court’s denial of post-conviction relief for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Browne’s petition for review fails to challenge the trial court’s sound legal analysis in any meaningful way, and the court’s order clearly identified the issues and correctly resolved them so any court in the future can understand its ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993); *cf. State v. Shrum*, 220 Ariz. 115, ¶ 23, 203 P.3d 1175, 1180 (2009) (successive claim based on *Gonzalez* barred by Rule 32.2; not “significant change in the law” under Rule 32.1(g)).

¶3 Although Browne alludes to subject matter jurisdiction to avoid preclusion, he has failed to develop any meaningful argument. And the supreme court has approved preclusion in these circumstances. *See Shrum*, 220 Ariz. 115, ¶ 23, 203 P.3d at 1180.

¹*See* 2001 Ariz. Sess. Laws, ch. 334, § 7.

Because the court's findings and conclusions are supported by the record before us, we see no purpose in rehashing its order here. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Instead, we adopt it. *See id.* Accordingly, although we grant Browne's petition for review, we deny relief.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge.